

## **BILL ANALYSIS**

C.S.H.B. 1692  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have raised concerns regarding issues arising from the implementation of recent legislation relating to the relationship between motor vehicle manufacturers and distributors and their franchised dealers and relating to the regulation of motor vehicle dealers, manufacturers, distributors, and representatives. C.S.H.B. 1692 seeks to address these implementation issues, as well as other recently identified issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the board of the Texas Department of Motor Vehicles in SECTION 10 of this bill.

### **ANALYSIS**

C.S.H.B. 1692 repeals Section 2301.606(a), Occupations Code, relating to the requirement for the director of the Motor Vehicle Division of the Texas Department of Motor Vehicles (TxDMV) to conduct hearings and issue final orders for the implementation and enforcement of statutory provisions governing vehicle warranties and the warranty-related rights of vehicle owners. The bill instead requires all hearings under statutory provisions governing the sale or lease of motor vehicles, rather than only hearings under provisions governing warranties, to be held by an administrative law judge of the State Office of Administrative Hearings, with the exception of a hearing regarding a complaint concerning a vehicle defect in a vehicle covered by a warranty or concerning a warranty in general, in which case the hearing must be held by a hearings examiner. The bill authorizes TxDMV to employ a chief hearings examiner and one or more additional hearings examiners, all of whom must be licensed to practice law in Texas, and specifies that a hearings examiner, along with an administrative law judge, has all of the TxDMV board's power and authority to conduct hearings.

C.S.H.B. 1692 requires the parties to a contested case regarding a complaint concerning a vehicle defect in a vehicle covered by a warranty or concerning a warranty in general to participate in mediation as provided by TxDMV board rule before the parties may have a hearing in the case and requires a hearing examiner to issue a final order in such a contested case hearing. The bill authorizes the board by rule to establish procedures to allow a party to a contested case to file a motion for rehearing and requires the motion to be filed with and decided by the chief hearings examiner.

C.S.H.B. 1692 amends the Transportation Code to make a conforming change.

C.S.H.B. 1692 makes its provisions applicable to a person who holds a license issued under statutory provisions governing the sale or lease of motor vehicles regardless of the date the license is issued or renewed.

## **EFFECTIVE DATE**

January 1, 2014.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1692 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### **INTRODUCED**

SECTION 1. Section 2301.263, Occupations Code, is amended to read as follows:

Sec. 2301.263. LICENSE ISSUED SUBJECT TO NEW LAW AND RULES. Notwithstanding any other law and regardless of the renewal date of a franchise agreement, a [A] license issued under this chapter is subject to each provision of this chapter and board rule in effect on the date the license is issued or renewed and each provision of this chapter and board rule that takes effect during the term of the license.

SECTION 2. Section 2301.405, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) A manufacturer or distributor may not directly or indirectly recover from a dealer an amount paid to the dealer under this subchapter:

(1) by imposing a surcharge on the dealer;  
or

(2) in any manner other than by a chargeback as provided by this section.

SECTION 3. Section 2301.4651, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (i) to read as follows:

(a) This section applies to a manufacturer, distributor, or representative that[=

~~[(1) terminates or discontinues a franchise by any means without complying with Section 2301.453; or~~

~~[(2) regardless of whether the manufacturer, distributor, or representative complies with Section 2301.453,]~~

terminates or discontinues a franchise by:

(1) [(A)] discontinuing a line-make;

### **HOUSE COMMITTEE SUBSTITUTE**

No equivalent provision.

No equivalent provision.

No equivalent provision.

(2) [(B)] ceasing to do business in this state; or

(3) [(C)] changing the distributor or method of distribution of its products in this state.

(b) In addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, a manufacturer, distributor, or representative to whom this section applies shall pay to the franchised dealer the following amounts as applicable:

(1) either:

(A) the dealer's construction costs for a new dealership completed in the two years preceding the date of the termination or discontinuance described by Subsection (a);

or

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of:

(i) the first anniversary of the termination or discontinuance date; or

(ii) the date on which the dealer no longer owns the dealership;

(2) the dealer's costs for upgrading or substantially altering a dealership if the upgrades or alterations were completed or added in the two years preceding the date of the termination or discontinuance described by Subsection (a); and

(3) an amount equal to the value of the goodwill associated with the franchise calculated ~~[as it existed on the day before the earlier of]:~~

(A) without consideration of the effect of the announcement of any termination; and ~~[the date of the termination or discontinuance described by Subsection (a); or]~~

(B) as if the franchise were still in effect and products associated with the franchise were still available ~~[the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise in a manner described by Subsection (a)].~~

(i) Except as specifically provided by this section, this section does not affect the rights granted, duties imposed, and procedures established under Sections

SECTION 4. Sections 2301.467(b), (b-1), and (b-2), Occupations Code, are amended to read as follows:

No equivalent provision.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not unreasonably require a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Except as provided by Subsection ~~[Subsections]~~ (b-1) ~~[and (b-2)]~~, an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date:

(1) the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative; or[-]

~~(2) [(b-2) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that]~~ a prior substantial change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

SECTION 5. Subchapter J, Chapter 2301, Occupations Code, is amended by adding Section 2301.483 to read as follows:

Sec. 2301.483. SELECTION BY DEALER OF VENDOR OR MATERIALS FOR DEALERSHIP IMPROVEMENT.

(a) Except as provided by Subsection (b), a manufacturer or distributor may not require a dealer to purchase or use specific materials or to purchase goods or services from a specific vendor when making an upgrade or improvement to the dealer's dealership.

(b) If a manufacturer or distributor provides money directly to a dealer to compensate the dealer for a specific upgrade or improvement, the dealer may select the materials and vendors for upgrade or improvement but shall select materials and vendors that are of like kind and quality to those specified by the manufacturer or distributor, if any.

No equivalent provision.

SECTION 6. Section 2301.652, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of Subsection (b), a protesting dealer is presumed to be in substantial compliance with the dealer's franchise if the dealer is not the subject of a pending enforcement proceeding by the board or department. The presumption created by this subsection is rebuttable.

No equivalent provision.

SECTION 7. Section 2301.6521(d), Occupations Code, is amended to read as follows:

(d) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation site is not:

(1) more than two miles [~~or less~~] from the dealership's current location; or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

No equivalent provision.

SECTION 8. Section 2301.702, Occupations Code, is amended to read as follows:

Sec. 2301.702. CONFLICT WITH OTHER LAW; RULES GOVERNING

No equivalent provision.

HEARINGS. (a) To the extent of a conflict between this chapter and Chapter 2001, Government Code, this chapter controls.

(b) A board rule relating to the procedures for a hearing on or the resolution of a dispute arising under this chapter applies to the person conducting the hearing or dispute resolution proceeding, regardless of whether that person is the board, the department, or another person.

SECTION 9. (a) Section 10, Chapter 684 (H.B. 2640), Acts of the 81st Legislature, Regular Session, 2009, is repealed.

(b) The changes in law made by Chapter 684 (H.B. 2640), Acts of the 81st Legislature, Regular Session, 2009, apply to a license issued under Chapter 2301, Occupations Code, regardless of the date the license was issued or renewed.

(c) Section 16, Chapter 137 (S.B. 529), Acts of the 82nd Legislature, Regular Session, 2011, is repealed.

(d) The changes in law made by Chapter 137 (S.B. 529), Acts of the 82nd Legislature, Regular Session, 2011, apply to a license issued under Chapter 2301, Occupations Code, regardless of the date the license was issued or renewed.

SECTION 10. The changes in law made by this Act apply to a license issued under Chapter 2301, Occupations Code, regardless of the date the license is issued or renewed.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 1. Section 2301.002, Occupations Code, is amended by amending Subdivision (17-a) and adding Subdivision (17-b) to read as follows:

(17-a) "Hearings examiner" means a person employed by the department to preside over hearings under this chapter.

(17-b) "Independent mobility motor vehicle dealer" means a nonfranchised dealer who:

(A) holds a general distinguishing number issued by the board under Chapter 503, Transportation Code;

(B) holds a converter's license issued under this chapter;

(C) is engaged in the business of buying, selling, or exchanging mobility motor

vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and

(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

No equivalent provision.

SECTION 2. Subchapter C, Chapter 2301, Occupations Code, is amended by adding Section 2301.104 to read as follows:

Sec. 2301.104. HEARINGS EXAMINERS.

(a) The department may employ a chief hearings examiner and one or more additional hearings examiners.

(b) A hearings examiner must be licensed to practice law in this state.

No equivalent provision.

SECTION 3. Sections 2301.606(b) and (c), Occupations Code, are amended to read as follows:

(b) In a hearing ~~[before the director]~~ under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

(1) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or

(2) does not substantially impair the use or market value of the motor vehicle.

(c) An order issued under this subchapter may not require ~~[The director may not issue an order requiring]~~ a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

(1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and

(2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

No equivalent provision.

SECTION 4. Section 2301.607(c), Occupations Code, is amended to read as follows:

(c) If a final order is not issued ~~[the administrative law judge does not issue a proposal for decision and recommend to the director a final order]~~ before the 151st day after the date a complaint is filed under this

subchapter, the department ~~[director]~~ shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department ~~[board]~~ shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

No equivalent provision.

SECTION 5. Section 2301.608, Occupations Code, is amended to read as follows:  
Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND. (a) An order issued under this subchapter must ~~[In an order issued under this subchapter, the director shall]~~ name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required ~~[ordered]~~ by the order ~~[director]~~.  
(b) If the final order requires ~~[director orders]~~ a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order ~~[director]~~ may require ~~[order]~~ the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.  
(c) In a case involving a leased vehicle, the final order ~~[director]~~ may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

No equivalent provision.

SECTION 6. Section 2301.609(a), Occupations Code, is amended to read as follows:  
(a) A party to a proceeding ~~[before the director]~~ under this subchapter that is affected by a final order ~~[of the director]~~ is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

No equivalent provision.

SECTION 7. Section 2301.610(d), Occupations Code, is amended to read as



follows:

(d) The department [~~board~~] shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this subchapter [~~of the director~~]. The department [~~board~~] shall maintain an effective method of providing information to a person who makes a request.

No equivalent provision.

SECTION 8. Section 2301.703, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The parties to a contested case under Section 2301.204 or Subchapter M must participate in mediation as provided by board rule before the parties may have a hearing in the case.

No equivalent provision.

SECTION 9. Section 2301.704, Occupations Code, is amended to read as follows:

Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW JUDGE. (a) Except as otherwise provided by this section, a [~~A~~] hearing under this chapter [~~subchapter~~] must be held by an administrative law judge of the State Office of Administrative Hearings.

(a-1) A hearing under Section 2301.204 or Subchapter M must be held by a hearings examiner.

(b) An administrative law judge and a hearings examiner have [~~has~~] all of the board's power and authority as provided by [~~under~~] this chapter to conduct hearings, including the power to:

- (1) hold a hearing;
- (2) administer an oath;
- (3) receive pleadings and evidence;
- (4) issue a subpoena to compel the attendance of a witness;
- (5) compel the production of papers and documents;
- (6) issue an interlocutory order, including a cease and desist order in the nature of a temporary restraining order or a temporary injunction;
- (7) make findings of fact and conclusions of law; and
- (8) issue a proposal for decision and recommend a final order.

(c) In a contested case hearing under Section

2301.204 or Subchapter M, a hearings examiner shall issue a final order.

No equivalent provision.

SECTION 10. Section 2301.713, Occupations Code, is amended to read as follows:  
Sec. 2301.713. REHEARING. (a) Except as otherwise provided by this section, a [A] party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.  
(b) The board by rule may establish procedures to allow a party to a contested case to file a motion for rehearing.  
(c) A motion for rehearing in a contested case under Section 2301.204 or Subchapter M must be filed with and decided by the chief hearings examiner.

No equivalent provision.

SECTION 11. Section 503.009(b), Transportation Code, is amended to read as follows:  
(b) The procedures applicable to a hearing conducted under this section are those applicable to a hearing conducted as provided by Section 2301.606 [~~2301.606(a)~~], Occupations Code.

No equivalent provision.

SECTION 12. Section 2301.606(a), Occupations Code, is repealed.

No equivalent provision.

SECTION 13. The changes in law made by this Act apply only to a complaint filed or a proceeding commenced on or after the effective date of this Act. A complaint filed or a proceeding commenced before the effective date of this Act is governed by the law in effect on the date the complaint was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 14. The changes in law made by this Act apply to a person who holds a license issued under Chapter 2301, Occupations Code, regardless of the date the license is issued or renewed.

SECTION 11. This Act takes effect

SECTION 15. This Act takes effect **January**

September 1, 2013.

1, 2014.

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